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12-23-1983

State of New York Public Employment Relations Board Decisions from December 23, 1983

New York State Public Employment Relations Board

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State of New York Public Employment Relations Board Decisions from December 23, 1983

Keywords

NY, NYS, New York State, PERB, Public Employment Relations Board, board decisions, labor disputes, labor relations

Comments

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of
TOWN OF CHILI,

#1A-12/23/83

Respondent,

-and-

CASE NO. U-6597

AFSCME, NEW YORK COUNCIL 66,

Charging Party.

BERNARD WINTERMAN, for Respondent

MICHAEL A. TREMONT, ESQ., for Charging Party

BOARD DECISION AND ORDER

AFSCME, New York Council 66 (AFSCME) complained that the Town of Chili (Town) violated §209-a.1(d) of the Taylor Law by charging employees for part of the cost of their health and accident insurance. It asserted that the charge constituted a unilateral change from a noncontributory health insurance program to a contributory program. The hearing officer found that the Town had violated its duty to negotiate with AFSCME, and the matter now comes to us on the exceptions of the Town.

The Town acknowledges that the unit employees were charged for part of the cost of their health and accident insurance

after January 1, 1983, but not before that date, and that the change was not negotiated. Its exceptions, however, make three arguments. The Town first argues that the hearing officer erred in deciding the case on an incomplete record. It then argues that the hearing officer erred in concluding that the unit employees had enjoyed a noncontributory health and accident insurance program, and that the premium charge after January 1, 1983 changed the nature of the insurance program.. Finally, it argues that its decision to charge unit employees was made before AFSCME had been recognized or certified as the representative of the unit employees and that the hearing officer, therefore, erred in finding that it had been obligated to negotiate with AFSCME at that time.

We reject each of the arguments. The record consists of a stipulation of facts prepared by AFSCME and signed by the Town. That stipulation was twice modified to satisfy the Town before it was signed. The Town cannot now be heard to complain about the evidentiary inadequacy of the record.

While acknowledging that it had paid 100% of the health and accident insurance premiums before January 1983, the Town contends that this does not evidence the existence of a noncontributory insurance program. Rather, it contends, it had paid an amount of money for insurance coverage that came to 100% of the premiums between April 1978 and December 1982. The emphasis, however, according to the Town, was on the amount of

money paid and not the percentage of premium costs. Thus, according to the Town, when the cost of insurance premiums rose in January 1983, it was not required to increase the amount of its premium payments but could pass that increase on to its employees.

There is no record evidence to support this interpretation of the Town's past practice. The sole relevant reference in the parties' stipulation is that:

Since 1975 the Employer has been providing its employees, ... with blue cross/blue shield coverage at no cost to the employees. In sum, the Employer paid 100% of the costs of the coverage.

We therefore affirm the determination of the hearing officer that the employees had continuously enjoyed noncontributory health and accident insurance coverage before being charged for such coverage in January 1983.

The following chronology is significant with respect to the District's substantive contention that its unilateral decision to charge unit employees for part of their health and accident insurance premiums was not inconsistent with its Taylor Law duty to negotiate with AFSCME. AFSCME filed a representation petition on September 9, 1982, and was successful in an election held on December 17, 1982. The Town had notice of all phases of the representation proceeding, had signed the tally of ballots on December 17, 1982, and filed no objection to the conduct of that election.

We certified AFSCME as the representative of the unit employees on December 30, 1982. On that same day the Town issued a memorandum notifying all unit employees that effective two days later it would not be responsible for the payment of insurance premium increases. Thereafter, on January 14, 1983, unit employees were first charged for rate increases that took effect on January 1, 1983.

Section 209-a.1(d) provides that it is improper for a public employer "to refuse to negotiate in good faith with the duly recognized or certified representatives of its public employees". The Town argues that its decision not to absorb increases in health and accident insurance premiums was made on November 30, 1982, and that the unilateral change, if any, occurred before AFSCME had been certified. There is no record evidence to support this argument. Moreover, any internal and noncommunicated determination to change the terms and conditions of employment of its employees does not constitute such a change.

According to the record, the first public indication of the change was the Town's issuance of a memorandum on December 30, 1982 announcing its decision to make that change. However, for the purpose of determining whether the change constitutes a violation of §209-a.1(d), the significant date is January 1, 1983, when the charges to employees for the rate increases first took effect, and not

December 30, 1982. Deer Park, UFSD, 14 PERB ¶3028 (1981).^{1/}

While the Town may not have known of the official certification at the time it issued its memorandum or even when the new employee charges became effective, it was aware of material facts sufficient to preclude it from denying any obligation to negotiate with AFSCME. It knew that AFSCME had been successful in an election two weeks earlier; it signed the tally of ballots, and it filed no objections to the conduct of the election. Accordingly, it should have known that AFSCME was in fact the acknowledged negotiating representative and that the official and merely ministerial act of certification of AFSCME was imminent. Under these circumstances, it had an obligation to refrain from acting unilaterally and thus confronting the chosen representative with a seemingly irreversible act.

NOW THEREFORE, WE ORDER the Town of Chili

(1) to cease and desist from enforcing its memorandum of December 30, 1982 requiring unit employees to pay increases in health insurance benefits.

(2) to reimburse unit employees for any health and accident insurance premiums they have paid since

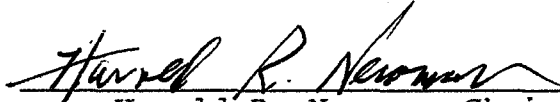
^{1/}The December 30, 1982 date would have been significant if there had been a question of timeliness of the charge.

January 1, 1983 with interest at 9% per annum,


(3) to negotiate in good faith with AFSCME regarding the payment of health and accident insurance premiums, and

(4) to post notices in the form attached in all locations normally used to communicate with unit employees.

DATED: December 23, 1983
Albany, New York


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE DECISION AND ORDER OF THE

NEW YORK STATE

PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE

PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify employees of the Town of Chili in the unit represented by AFSCME, New York Council 66, that the Town of Chili will:

1. Not enforce its memorandum of December 30, 1982 requiring unit employees to pay increases in health insurance benefits;
2. Reimburse unit employees for any health and accident insurance premiums they have paid since January 1, 1983 with interest at 9% per annum;
3. Negotiate in good faith with AFSCME regarding the payment of health and accident insurance premiums.

Town of Chili

Dated

By
(Representative) (Title)

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

8683

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

WELLS CENTRAL SCHOOL DISTRICT,

#1B-12/23/83

Respondent,

-and-

CASE NO. U-6357

WELLS TEACHERS ASSOCIATION, NYSUT,

Charging Party.

WILLIAM H. INTEMMANN, JR., ESQ., for Respondent.

KEVIN BERRY, for Charging Party.

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Wells Teachers Association, NYSUT (Association) to a hearing officer's decision dismissing a specification of its charge against the Wells Central School District (District). The specification of the charge alleges that the District violated Section 209-a.1(d) of the Taylor Law by unilaterally deciding to hold school on June 1, 1982, thus increasing the number of teacher work days from 180 to 181.^{1/} The District's school calendar had designated June 1, 1982 as a possible day off, depending on the number of snow days used.

^{1/}The hearing officer found merit in a second specification of the charge which alleged that the District refused to negotiate the impact of its unilateral change. There were no exceptions to this finding.

Although the condition for June 1 being a day off had been satisfied, the District announced on May 13, 1982 that June 1 would be a regular school day. The charge herein was filed on September 29, 1982, more than four months after May 13, 1982. Applying Section 204.1(a) of the Rules of this Board, the hearing officer determined that this specification of the charge had not been timely filed.

The Association argues that the hearing officer erred in concluding that the District's announcement on May 13 was the conclusive unilateral action which set the limitation period running. It contends that the unilateral action in fact took place on the last day of school, when the teachers actually worked their 181st day. At any time until then, according to the Association, the June 1 day could have been offset by a compensatory day off. Alternatively, the Association argues that the violation occurred on June 1, when they were required to work.

We reject this argument. The record establishes that the Association's President was notified on May 13, 1982 that the teachers would be required to work on June 1, 1982, and that this assignment was intended to increase the total number of teacher work days from 180 to 181.^{2/} The notice was the

^{2/}This notice was confirmed by a written notice given to the teachers four days later, a time still more than four months before the charge was filed.

operative action of the District in increasing the number of work days of the teachers. The notice gave the Association no reason to expect that the teachers would be given compensatory time off for the June 1, 1982 work day. Accordingly, the charge was not timely. County of Monroe, 10 PERB ¶3104 (1977).

The Association also asserts that the hearing officer erred in dismissing the specification of the charge on the ground of timeliness because the District had not raised that issue. Thus, according to the Association, an objection based upon timeliness was waived.

We find no merit in this argument. Section 204.2(a) of our rules provides that the Director of Public Employment Practices and Representation may dismiss the charge before assigning it to a hearing officer if, on its face, it is not timely. Once a charge has been referred to a hearing officer, it may be dismissed on the ground that it is not timely. The relevant provisions of §204.7(1) of our rules provide:


A motion may be made to dismiss a charge, or the hearing officer may do so at his own initiative on the ground that the alleged violation occurred more than four months prior to the filing of the charge, but only if the failure of timeliness was first revealed during the hearing. An objection to the timeliness of the charge, if not duly raised, shall be deemed waived.

Here, the facts as to the notice of May 13, 1982, constituting the operative action of the District in increasing the number of workdays of the teachers, were revealed at the hearing. Accordingly, the

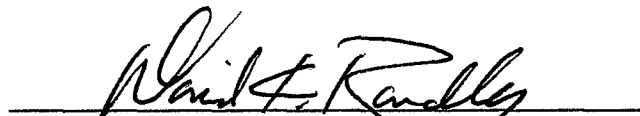
hearing officer was authorized to dismiss the charge on his own motion on the ground that it was filed more than four months after May 13, 1982.

NOW, THEREFORE, WE ORDER that the exceptions herein be,
and they hereby are, dismissed

DATED: December 23, 1983
Albany, New York


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#1C-12/23/83

LOCAL 418, CIVIL SERVICE EMPLOYEES
ASSOCIATION, INC., LOCAL 1000, AFSCME,
AFL-CIO,

Respondent,

-and-

CASE NO. U-6511

LUIS F. DIAZ,

Charging Party.

ROEMER AND FEATHERSTONHAUGH, ESQS. (MICHAEL J.
SMITH, ESQ., of Counsel), for Respondent

AUGUST J. GINOCCHIO, ESQ. AND LIPP & RUBIN, P.C.
(DAVID S.J. RUBIN, ESQ., of Counsel), for
Charging Party

BOARD DECISION AND ORDER

Luis F. Diaz was fired by Pilgrim State Psychiatric Center for patient abuse. Claiming an error on the part of the State, he asked Local 418, Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (CSEA) to file a grievance on his behalf. CSEA did so, and it subsequently demanded arbitration. Apparently, however, the demand for arbitration was not timely filed and the

arbitrator dismissed the grievance on that ground. Diaz then asked CSEA to appeal the arbitrator's award, but CSEA refused to do so.

Diaz then commenced a proceeding in the Supreme Court under CPLR Article 75 against the State and CSEA seeking to set aside the arbitrator's action. Among other things, he alleged in that proceeding that CSEA violated its Taylor Law duty of fair representation in its handling of the grievance and that the arbitration award had been obtained by corruption or fraud. Without considering the merits of Diaz' complaints about CSEA and the State, the Court determined that the arbitrator took too narrow a view of his jurisdiction when he dismissed the charge. It vacated the arbitration award and allowed Diaz to pursue the regular negotiated grievance procedure. Both the State and CSEA appealed from that decision of the Court. CSEA argued that Diaz had no standing to seek review of the arbitration award because only it and the State were parties to the arbitration proceeding and could challenge the arbitration award. The Appellate Division agreed with CSEA and reversed the decision of the lower court. Diaz v. Pilgrim Psychiatric Center of the State of New York, et al., ____ App. Div. ____ (2d Dept., 1983).

The charge herein alleges that CSEA violated its duty of fair representation by refusing to accept the decision

of the Supreme Court which supports Diaz, and by taking an appeal from that decision.^{1/} Relying upon New York City School District, 15 PERB ¶3136 (1982), the Director of Public Employment Practices and Representation (Director) ruled that CSEA's participation in the appeal could not constitute an improper practice because a party is entitled to bring a lawsuit to adjudicate its claims. Accordingly, he dismissed the charge on the ground that it does not state a cause of action. The matter now comes to us on Diaz' exceptions to the Director's decision.

We affirm the dismissal of the charge by the Director. There was a reasonable basis for CSEA's appeal of the decision of the Supreme Court, and as we said in New York City School District, "the commencement of a lawsuit itself cannot constitute an improper practice."^{2/} Accordingly, we find that CSEA's mere participation in the appeal from the decision of the Supreme Court did not violate its duty of fair representation.

^{1/}We note that in another case (U-5998), which is pending before a hearing officer, Diaz complains that CSEA violated its duty of fair representation both by failing to demand arbitration in time and by refusing to appeal the decision of the arbitrator.

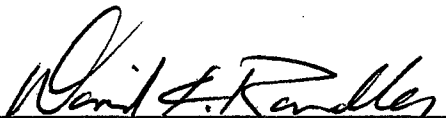
^{2/}See also Bill Johnson's Restaurants v. NLRB, ____ U.S. ____ (1983), 113 LRRM 2648.

NOW, THEREFORE, WE ORDER that the charge herein be,
and it hereby is, DISMISSED.

DATED: December 23, 1983
Albany, New York


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

#1D-12/23/83

JEFFERSONVILLE-YOUNGSVILLE CENTRAL SCHOOL
DISTRICT,

Respondent,

-and-

CASE NO. U-6341

NON-INSTRUCTIONAL EMPLOYEES GROUP,
JEFFERSONVILLE-YOUNGSVILLE CENTRAL
SCHOOL DISTRICT FACULTY ASSOCIATION,
INC.,

Charging Party.

SHELDON ROSENBERG, ESQ., for Respondent

C. FREDERICK OTT, for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Jeffersonville-Youngsville Central School District (District) to a hearing officer's decision that it violated §209-a.1(d) by refusing to execute an agreement reached by its negotiating team.

FACTS

The Non-Instructional Employees Group, Jeffersonville-Youngsville Central School District Faculty Association, Inc. (Association) and the District commenced negotiations in March 1981 for a collective bargaining agreement to succeed one which was due to expire on June 30, 1982. As the hearing officer found, it was understood and agreed to by both parties that any agreement reached by their respective negotiators would be submitted for ratification by both the

members of the Association and of the school board.

The District's negotiating team consisted of Reilly, the District's superintendent, and Ridley, Umhoefer and Hess, three of the seven members of the school board. On January 21, 1982, the District's negotiating team indicated that it had offered as much money as it could for the first year, but that it was willing "to seek authority from its school board" to offer more than it had for the second year of a two-year agreement. It did so and received authority to offer an additional \$2,000 for the second year. This information was not communicated to the Association when the parties met on February 17, 1982. During the course of negotiations on that day, Superintendent Reilly offered more than the additional \$2,000 for the second year of the agreement and the Association accepted the offer. Ridley and Umhoefer, the two members of the District's negotiating team present on February 17, acknowledged to the Association that an agreement was reached on that day. Hess was not present at that meeting, but he supported the agreement throughout the subsequent events.

Thereafter, on March 25, 1982, Superintendent Reilly and the Association reached an agreement on a schedule for the distribution of the salary increase accepted on February 17.

The Association's membership ratified the agreement on June 3, 1982. The school board first considered the agreement at an executive session held on June 2, 1982. Of

the District's negotiators, Superintendent Reilly and board members Ridley and Hess advocated ratification of the agreement at that time, but Umhoefer complained that the money offer was too great. Ratification was formally rejected on June 24, 1982 at a public meeting of the board. The board voted for Umhoefer's proposal that only the first year's salary increase of the agreement be approved. Her proposal received six votes including that of Ridley. Hess, who had proposed ratification of the agreement, and Superintendent Reilly, who was not authorized to do so, did not participate in the vote. Thereafter, Reilly refused the Association's demand to execute the memorandum of agreement.

On these facts, the hearing officer determined that Reilly's refusal to execute the agreement constituted a violation of §209-a.1(d). In doing so, she relied upon this Board's decisions in Union Springs Central School Teachers Association, 6 PERB ¶3074 (1973), and Harpursville Central School District, 14 PERB ¶3003 (1980). In Union Springs this Board found that the failure of negotiators for an employee organization to support an agreement during the ratification process constitutes an improper practice. The focus of our Union Springs decision was clarified in Harpursville where we observed that not all members of a negotiating team are obligated to support every part of an agreement so long as the other party has not been misled by any member's ultimate dissenting position. The hearing officer found no evidence

that any of the District's negotiators who subsequently voted against the salary agreement had previously made known to the Association their opposition to the agreement.

DISCUSSION

The District makes the following arguments in support of its exceptions.

Union Springs is not applicable because there is no evidence that the proposal to reject the second year of the negotiated agreement contributed to the failure of ratification. The District contends that even if all three board members who were on the negotiating team had voted for ratification of the agreement, it would have been defeated by a four to three vote because the negotiators had agreed to give the employees more money than they had been authorized to give.

We reject this argument. It is unnecessary to conjecture as to what each of the four remaining members of the school board would have done during the ratification vote if the three board members on the negotiating team had all supported the agreement. It is sufficient, as the hearing officer found, that the defection of two of the three board members generated an atmosphere which made rejection of the agreement easier. A clear corollary of our decision in Harpursville is that each member of a negotiating team is obligated to support every part of an agreement unless the other party has been advised that he dissented from the part

of the agreement which he subsequently opposed.


The District's second argument is that no agreement was reached on February 17 because the offer made by the District's negotiators was not authorized by the school board. This argument is rejected on two grounds. First, it is based upon the erroneous assumption that a school board may deprive its superintendent of the authority given to him alone by the Taylor Law to negotiate collective bargaining agreements.^{1/} Second, assuming that the school board could restrict the authority of the superintendent and his negotiating team to conclude an agreement, there is no evidence that the school board communicated any restriction on the authority of the District's negotiating team members to the Association, or that the District's negotiators advised the Association that the agreement they reached was beyond their authority. On the contrary, it is clear on the record that the Association reasonably anticipated that the District would publicly acknowledge the agreement. The Association was therefore entitled to rely upon the representations of the District's negotiators that an agreement had been concluded. Ulster County Community College, 4 PERB ¶3088 (1971).

^{1/}See subdivisions 10, 11 and 12 of §201 of the Taylor Law and City of Kingston, 15 PERB ¶8009 (1982), affirmed City of Kingston v. PERB, 16 PERB ¶7002 (Sup. Ct., Albany Co., 1983), for the statutory relationship of the chief executive officer (superintendent) and the legislative body (school board) of a public employer.

NOW, THEREFORE, WE ORDER the District:

1. to cease and desist from refusing to negotiate in good faith;
2. to execute the memorandum of agreement, including the salary distribution schedule reached on March 25, 1982 and, upon request, incorporate its contents in a formal signed contract between the parties; and
3. to sign and post the attached notice at all locations used by it for communications to the members of the bargaining unit.

DATED: December 23, 1983
Albany, New York


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE DECISION AND ORDER OF THE

NEW YORK STATE

PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE

PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify the employees of the Jeffersonville-Youngsville Central School District (District) in the unit represented by the Non-Instructional Employees Group, Jeffersonville-Youngsville Central School District Faculty Association, Inc. (Association) that:

1. the District shall not refuse to negotiate in good faith with the Association; and
2. the Superintendent of Schools will execute the memorandum of agreement, including salary distribution schedule, reached with the Association on March 25, 1982 and, upon Association request, incorporate its contents in a formal signed contract with the Association.

Jeffersonville-Youngsville C.S.D.

Dated

By
(Representative) (Title)

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

8698

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

HUNTER-TANNERSVILLE TEACHERS'
ASSOCIATION,

#1E-12/23/83

Respondent,

-and-

CASE NO. U-6576

HUNTER-TANNERSVILLE CENTRAL SCHOOL
DISTRICT,

Charging Party.

HAROLD FAIRBANKS, for Respondent.

HANCOCK, ESTABROOK, RYAN, SHOVE & HUST, ESQS.
(JAMES P. BURNS III, ESQ, of Counsel), for
Charging Party.

BOARD DECISION AND ORDER

On January 11, 1983 the Hunter-Tannersville Central School District (District) filed an improper practice charge alleging that the Hunter-Tannersville Teachers Association (Association) violated §209-a.2 of the Taylor Law by refusing to negotiate a proposal to examine alternatives to the State-wide health insurance plan presently covering unit employees. The charge indicated that the District and the Association were parties to an agreement which was still in effect and which dealt with the subject of health insurance. According to the

District, that agreement provided for a reopener on health insurance in the following words:

The Association and the Superintendent of Schools or his designee shall meet to examine insurance coverage offered by other companies. If the committee finds and agrees to a different bona fide insurance company offering no less than the present maximum insurance coverage at a lesser cost to the District than the present insurance plan, it will be adopted in the second and third year of this contract. An acceptable alternative may be a self insurance program.

Acting pursuant to §204.2(a) of our Rules of Procedure, the Director of Public Employment Practices and Representation (Director) notified the Association on February 3, 1983 that the charge had been filed, that a hearing officer had been assigned and that an answer to the charge or an appropriate motion should be forwarded to the hearing officer.^{1/}

On February 15, 1983, the Association filed an answer to the charge. In that answer it admitted having agreed to a reopener on health insurance and it asserted two defenses to the District's charge. The first was that its conduct had satisfied "its responsibility to negotiate in good faith" The second was that the charge was

^{1/}Section 204.2(a) of our rules provides that the Director shall dismiss the charge if he determines "that the facts as alleged do not, as a matter of law, constitute a violation." Otherwise he shall assign a hearing officer to consider the merits of the charge.

premature in that the impasse resolution procedures provided by §209 of the Taylor Law had not yet been invoked.

After holding a pre-hearing conference, the hearing officer determined that the language of the parties' agreement, which ostensibly constituted a reopener on health insurance, was ambiguous. Relying upon our decisions in Levittown, 13 PERB ¶3014 (1980), and State of New York, 13 PERB ¶3106 (1980), she then dismissed the charge. In both those cases, we dismissed charges which alleged a refusal to negotiate pursuant to a contract reopener on the ground that the alleged reopener was ambiguous and that we would not interpret the parties' agreement to ascertain whether there was a relevant reopener. The hearing officer understood our decisions in Levittown and State of New York as holding that we lack jurisdiction to interpret the parties' agreement and that we are therefore without power to require a party to negotiate pursuant to a contractual reopener unless the reopener is absolutely explicit. Under this analysis, the Association's acknowledgment that it had agreed to a reopener is irrelevant as the parties could not bestow jurisdiction upon this Board by their pleadings where it is not bestowed by law.

The matter now comes to us on the exceptions of the District, which contend, among other things, that the

hearing officer has misconstrued Levittown and State of New York.^{2/} It argues that the hearing officer could have, and should have, determined that the parties agreed upon a contract reopener. We find merit in this argument.

The statutory limitation on the jurisdiction of this Board with respect to the interpretation of collective bargaining agreements is set forth in §205.5(d) of the Taylor Law. It provides that:

the board shall not have authority to enforce an agreement between an employer and an employee organization and shall not exercise jurisdiction over an alleged violation of such an agreement that would not otherwise constitute an improper employer or employee organization practice.

There is nothing in this language which precludes this Board from ordering an employee organization or a public employer to negotiate pursuant to a contract reopener provision. Neither does the statute preclude this Board from interpreting the agreement to ascertain whether it contains a relevant reopener.

The Board's view of the statutory policy is explicated in St. Lawrence County, 10 PERB ¶3058 (1977).

^{2/}In a consolidated decision, the hearing officer also dismissed a related charge (U-6710), made by the Association, that the District unilaterally changed the health insurance plan. The Association has not filed exceptions to this part of the hearing officer's decision.

which adopted the dissenting opinion in Town of Orangetown, 8 PERB ¶3042 (1975). These decisions hold that while this Board does not have broad jurisdiction simply to interpret collective bargaining agreements, it may do so in the exercise of its basic authority to determine whether there has been a statutory violation. For example, this Board held in St. Lawrence County that it may determine "whether an employee organization has waived its right to negotiate on a particular subject so as to permit unilateral action by an employer." Similarly, here, we may interpret a collective bargaining agreement to determine whether an employee organization has waived its right not to negotiate on a particular subject covered by a collective bargaining agreement.

Levittown and State of New York do not hold that we lack jurisdiction to interpret an agreement to ascertain whether it contains a relevant reopener. They indicate only that we may exercise our discretion to decline to do so. Section 205.5(d) of the Taylor Law limits our authority to interpret agreements except where a violation of the agreement would otherwise constitute an improper practice. It does not, however, require us to do so in all instances where an improper practice may be involved, thus leaving to us the discretion to assert or withhold

exercise of our jurisdiction. Even before the amendment of §205.5(d) of the Taylor Law to include the above-quoted language,^{3/} we had declined to exercise jurisdiction over an alleged improper practice. In New York City Transit Authority (Bordansky), 4 PERB ¶3031 (1971), we did so because the parties had a contractually-provided remedy available to them.^{4/}

In Levittown and State of New York we exercised our discretion and refused to interpret an ambiguous clause of a collective bargaining agreement because other appropriate forums were available to make such an interpretation. Here, however, it is indisputably clear from the pleadings with respect to the improper practice charged that the parties have agreed upon a relevant reopener.

Accordingly, the matter is remanded to the hearing officer to ascertain by appropriate procedures, including a hearing if necessary, whether the Association has violated its statutory duty to negotiate pursuant to that reopener.


^{3/}L. 1977, c. 429.

^{4/}Compare the declination of jurisdiction by the NLRB as noted in NLRB v. Pease Oil Co., 279 F2d 135, 46 LRRM 2286 (2d Cir., 1963).

NOW, THEREFORE, WE ORDER that the charge herein be,
and it hereby is, remanded to the
hearing officer for further
proceedings consistent with this
decision.

DATED: December 23, 1983
Albany, New York


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

SWEET HOME CENTRAL SCHOOL DISTRICT, #2F-12/23/83

Respondent,

-and-

CASE NO. U-6231

SWEET HOME ASSOCIATION OF SUBSTITUTE
TEACHERS, NYSUT, AFT, AFL-CIO,

Charging Party.

GROSS, SHUMAN, BRIZDLE, LAUB & GILFILLAN, P.C.
(ROBERT J. FELDMAN, ESQ., of Counsel),
for Respondent

CHARLES J. RACCUIA, for Charging Party

BOARD DECISION AND ORDER

This matter comes to us on the exceptions of the Sweet Home Central School District (District) to a hearing officer's decision that it violated §209-a.1(d) of the Act when it refused to negotiate with the Sweet Home Association of Substitute Teachers, NYSUT, AFT, AFL-CIO (Association). The parties submitted the case to the hearing officer on the pleadings and a stipulation of facts.

On June 7, 1982, this Board certified the Association as representative of a unit consisting of "all per diem

substitute teachers who in the immediately preceding school year received the reasonable assurance of continuing employment referred to in Civil Service Law §201.7(d)."^{1/} Shortly thereafter, the Association asked the District to set a date for the commencement of negotiations. The District replied by denying any obligation to negotiate, claiming that since it had not sent a letter containing an offer or assurance of continuing employment to any per diem substitute, none were covered by the definition of the certified unit.

The parties stipulated that in each June preceding the 1979-80, 1980-81 and 1981-82 school years, the District forwarded written assurances of continuing employment to virtually all of its approximately 120 per diem substitutes. It chose not to do so with regard to employment for the 1982-83 school year. The District did, however, make telephone inquiries during the summer preceding that term "to a number of its 1981-82 per diem substitute teachers to determine their availability for the 1982-83 school year." In addition, it was stipulated that many of the 120

^{1/}Under §201.7(d), a substitute teacher is a public employee entitled to Taylor Law representation rights if he or she has been given "a reasonable assurance of continuing employment" which is sufficient under §590.10 of the Labor Law to disqualify the substitute from receiving unemployment insurance benefits.

substitutes who were employed by the District during the 1982-83 school year had worked for the District in that capacity for nine or more years, including the 1980-81 and 1981-82 school terms.

In finding a violation, the hearing officer deemed immaterial the fact that eighteen substitutes did receive unemployment insurance benefits during the summer of 1982. Relying upon decisions and opinions of the State Labor Department and the courts, he found that the stipulated facts established that a number of the per diem substitutes had received "reasonable assurance" from the District. In this regard, he, inter alia, drew an inference that the District kept a record of the names and responses of those substitutes that it telephoned and found that this would have been sufficient to disqualify these substitutes from receiving unemployment insurance benefits under §590.10 of the Labor Law. The District takes exception to each of these findings and also points to the absence of evidence that any substitute was actually disqualified from receiving unemployment insurance benefits during the summer of 1982.

We affirm the decision of the hearing officer. The receipt of unemployment insurance benefits by eighteen of the substitutes is not dispositive. This fact might have been material had the record established that these substitutes received benefits despite having received an availability inquiry from the District. That situation might have given

rise to an implication that the telephone inquiries were insufficient to disqualify the substitutes from receiving unemployment insurance benefits. In the present case, however, there is no evidence that any of the eighteen recipients were among those telephoned. As regards the absence of evidence that any substitute was actually disqualified from receiving unemployment insurance benefits, we do not read CSL §201.7(d) as requiring that per diem substitutes must apply and be rejected for such benefits before this Board can find that representation rights exist. Certainly, any substitutes who believe that they have been given reasonable assurance and that they are thereby ineligible for unemployment insurance benefits are not likely to apply for such benefits.

Since per diem substitutes are entitled to representation rights only if they have received "reasonable assurance of continuing employment" in accordance with §590.10 of the Labor Law, the hearing officer properly turned to the decisions and opinions of the Labor Department's Unemployment Insurance Division, the Unemployment Insurance Appeals Board, and the courts for authority regarding the interpretation of that statutory term. Our reading of those decisions and opinions persuades us that the District gave such reasonable assurance to a number of its per diem substitutes. While the cases are, as the District argues, factually distinguishable, the hearing officer specifically recognized this and cited them only for the general criteria and principles set out therein.

The decisions and opinions of the Labor Department and the courts have construed "reasonable assurance" in very broad terms. It may be given orally, there being "no requirement in the Law that such assurance be in writing."^{2/} Placement of a substitute's name on a list of eligible substitutes is clear evidence that reasonable assurance has been tendered,^{3/} but actual placement on such a list is not a sine qua non. A school district's mere "inquiry of interest", in various forms, has been held sufficient in the absence of evidence of actual placement.^{4/} Both a district's need for per diem substitutes and a claimant's history and experience as a substitute with a district are taken into account.^{5/} The intention to employ for the next school term may be implied and even conditional provided that the claimant is

^{2/}Unemployment Insurance Appeals Board No. 327183; State Labor Department, Unemployment Insurance Division, Special Bulletin A-710-53 (4/25/78) at p. 6.

^{3/}Unemployment Insurance Appeals Board Nos. 284001A, 327153, and 327180; Matter of Williams (Ross), 81 AD2d 928 (3d Dept., 1981), mt. lv. app. den., 54 NY2d 608 (1981).

^{4/}Unemployment Insurance Appeals Board No. 304702; Matter of Scully (Roberts), 88 AD2d 689 (3d Dept., 1982).

^{5/}Special Bulletin A-710-53, supra at p. 12; Matter of Wilson (Ross), 80 AD2d 980 (3d Dept., 1981), mt. lv. app. den., 54 NY2d 606 (1981).

unlikely to be affected by the condition.^{6/}

In accordance with these principles, we find that the telephone calls made by the District to a number of its per diem substitutes, inquiring as to their availability for employment in that capacity during the 1982-83 school term, strongly implied that these substitutes had a likelihood and legitimate expectation of continuing employment with the District. The implication is especially obvious when the inquiries are viewed in light of both the District's recurring need for per diem substitutes and its use of many of the same substitutes for many consecutive years. We believe these circumstances are sufficient to constitute "reasonable assurance" within the meaning of §590.10 of the Labor Law and §201.7(d) of the Act. Given this combination of factors, we do not believe it was necessary for the hearing officer to additionally infer that a list or record of those telephoned was maintained by the District. We nevertheless agree that the inference drawn was a reasonable one. Since the purpose of the telephone inquiries was to ascertain availability for future employment, it is difficult to envision that a list or record of the names and responses was not maintained.^{7/}

^{6/}Special Bulletin No. A-710-53, supra at pp. 6-7.

^{7/}In this regard, we note that the District has not asserted in any of its papers that such a list or record was not made.

NOW, THEREFORE, WE ORDER the Sweet Home Central School District to negotiate in good faith with the Sweet Home Association of Substitute Teachers, NYSUT, AFT, AFL-CIO and to sign and post a notice in the form annexed hereto at all locations ordinarily used to communicate with unit employees.

DATED: December 23, 1983
Albany, New York

Harold R. Newman
Harold R. Newman, Chairman

Ida Klaus
Ida Klaus, Member

David C. Randles
David C. Randles, Member

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE DECISION AND ORDER OF THE

NEW YORK STATE

PUBLIC EMPLOYMENT RELATIONS BOARD

and in order to effectuate the policies of the

NEW YORK STATE

PUBLIC EMPLOYEES' FAIR EMPLOYMENT ACT

we hereby notify all employees in the unit represented by the Sweet Home Association of Substitute Teachers, NYSUT, AFT, AFL-CIO (Association) that we will negotiate in good faith with the Association.

Sweet Home Central School District

Dated

By
(Representative) (Title)

This Notice must remain posted for 30 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

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STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

LOCKPORT CITY SCHOOL DISTRICT,

#2G-12/23/83

Employer,

-and-

CASE NO. C-2679

LOCKPORT ADMINISTRATORS AND SUPERVISORS
ASSOCIATION/SCHOOL ADMINISTRATORS
ASSOCIATION,

Petitioner.

BOARD DECISION AND ORDER

On October 17, 1983, the Lockport Administrators and Supervisors Association/School Administrators Association (petitioner) filed a timely petition for certification as the exclusive negotiating representative of certain administrative employees of the Lockport City School District (employer).

A secret ballot election was held on December 6, 1983, pursuant to a consent agreement in which the parties stipulated the following as the appropriate negotiating unit:

Included: High School Principal; High School Assistant Principal; Junior High School Principal; Junior High School Assistant Principal, Elementary Principal, Director of Physical Education, Sports & Safety.

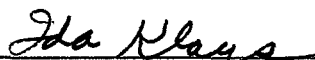
Excluded: Superintendent; Assistant Superintendent; Assistant to Superintendent for Management Services; Assistant to Superintendent for Staff & Pupil Personnel Services.

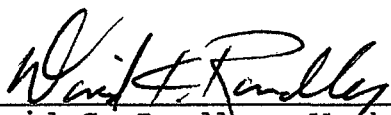
The results of the election indicate that a majority of eligible voters in the unit do not desire to be represented by the petitioner.^{1/}

THEREFORE, IT IS ORDERED that the petition be, and it hereby is, DISMISSED.

Dated: Albany, New York,
December 23, 1983


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member

^{1/} Of the fifteen ballots cast, seven were for and eight were against representation by the petitioner. There were no challenged ballots.

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of

MUNICIPAL HOUSING AUTHORITY FOR THE
CITY OF YONKERS, NEW YORK,

#2A-12/23/83

Employer,

-and-

CASE NO. C-2673

LOCAL 456, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA,

Petitioner,

-and-

WESTCHESTER LOCAL 860, CIVIL SERVICE
EMPLOYEES ASSN., AFSCME, LOCAL 1000,
AFL-CIO,

Intervenor.

CERTIFICATION OF REPRESENTATIVE AND ORDER TO NEGOTIATE

A representation proceeding having been conducted in the above matter by the Public Employment Relations Board in accordance with the Public Employees' Fair Employment Act and the Rules of Procedure of the Board, and it appearing that a negotiating representative has been selected,

Pursuant to the authority vested in the Board by the Public Employees' Fair Employment Act,


IT IS HEREBY CERTIFIED that Local 456, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America has been designated and selected by a majority of the employees of the above named public employer, in the unit agreed


upon by the parties and described below, as their exclusive representative for the purpose of collective negotiations and the settlement of grievances.


Unit: Included: All maintenance and janitorial
 employees
 Excluded: Administrative personnel, office
 personnel, Building
 Superintendents, and all other
 employees.

Further, IT IS ORDERED that the above named public employer shall negotiate collectively with Local 456, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and enter into a written agreement with such employee organization with regard to terms and conditions of employment of the employees in the unit found appropriate, and shall negotiate collectively with such employee organization in the determination of, and administration of, grievances of such employees.

DATED: December 23, 1983
Albany, New York


Harold R. Newman, Chairman


Ida Klaus, Member


David C. Randles, Member